



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Elaine L. Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-870

Dear Ms. Fannin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34177.

The Texas Department of Agriculture (the "department") received a request for a copy of an investigative report of a pesticide application. You have provided a copy of the investigative report, the majority of which you have released. You claim, however, that portions of the report are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08 provides in pertinent part

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than persons ... acting on the patient's behalf may not disclose

the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

In addition, section 5.08(j)3 provides for further release of confidential medical records obtained with a valid consent for release, only if the disclosure "is consistent with the authorized purposes for which consent to release the information was obtained." The submitted documents contain medical records created by a physician. This information is made confidential by section 5.08(b). See Open Records Decision No. 565 (1990). Similarly, the Pesticide Impact Evaluation which contains information extracted from the medical records is made confidential by section 5.08(c). Thus, further release is authorized only as outlined in sections 5.08(c) and 5.08(j)(3) of the Medical Practice Act, V.T.C.S. article 4495b. For your convenience, we have marked the information made confidential under the Medical Practice Act.

Section 552.101 of the Government Code also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

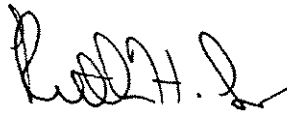
information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

A portion of the submitted documents contain symptoms of illness alleged to be caused by exposure to pesticides. This information, however, is not intimate and embarrassing and is of legitimate public interest. Accordingly, you may not withhold this information pursuant to common-law privacy as incorporated by section 552.101 of the Government Code. See Open Records Decision No. 370 (1983) (*Industrial Foundation* specifically rejected claim that all medical information may be withheld by common-law privacy.)

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LMM/rho

Ref.: ID# 34177

Enclosures: Marked documents

cc: Mr. David F. Gossom
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(w/o enclosures)